

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALL NIPPON AIRWAYS
COMPANY,

Plaintiff,

v.

UNITED AIR LINES,

Defendant.

No. C-07-03422 EDL

ORDER DENYING MOTION TO
COMPEL WITHOUT PREJUDICE

This action arises from an October 7, 2003 ground collision between two airplanes. All Nippon Airways (“ANA”) alleges that United Airline’s (“UAL”) negligence caused the collision. UAL filed an amended counter-complaint on October 26, 2007, which alleges negligence against ANA. It also alleges breach of contract of a Standard Ground Handling Agreement between ANA and UAL. UAL now moves to compel ANA to produce certain documents responsive to its request to produce documents and notices of taking video depositions. It also requests additional time to compete the depositions of ANA pilots Yusuke Nishiguchi, Eishin Yamaguchi, and Teruo Usui, as well as costs and fees.

It is hereby ORDERED that UAL’s motion is DENIED WITHOUT PREJUDICE. UAL may re-file its motion after its counsel meets and confers with ANA’s counsel about the issues in UAL’s motion. Counsel shall meet and confer through good faith, detailed, face-to-face or telephonic conversations about the issues raised in the motion. If the parties have unresolved issues after doing so, the Court will resolve those issues. The Court will entertain a request to shorten time on such a motion.

1 In this District, the local rules are very specific about meet and confer requirements. “Meet and
2 confer” or “confer” means “to communicate directly and discuss in good faith the issue(s) required
3 under the particular Rule or order. . . . The mere sending of a written, electronic, or voice-mail
4 communication, however, does not satisfy a requirement to ‘meet and confer’ or to ‘confer.’ Rather,
5 this requirement can be satisfied only through direct dialogue and discussion – either in a face to face
6 meeting or in a telephone conversation.” Civil L.R. 1-5(n).

7 UAL’s counsel, Scott Torpey, has stated, under oath, that “pursuant to Fed. R. Civ P. 37(a)(1),
8 . . . on December 21, 2007, [he] called ANA’s counsel in an effort to secure the disclosure without court
9 action. Additionally [he] previously informed ANA’s counsel at the recent depositions of ANA’s flight
10 crew that [he] would be filing a motion to compel.” Torpey Decl. ¶ 1.

11 While ANA does not specifically deny that counsel conferred in a meaningful, good faith manner
12 about these issues, it is not clear from the declaration whether such activities occurred. In addition,
13 UAL filed its motion to compel on December 21, 2007, the same day Mr. Torpey attempted to contact
14 ANA’s counsel once again to discuss the issues. Furthermore, when UAL filed its last motion to
15 compel, the parties appeared to “meet and confer” via their written briefs and were able to resolve their
16 issues after the motion was fully briefed, but prior to the hearing. This suggests that if counsel conferred
17 more thoroughly at the outset, they may have been able to resolve some of those issues amongst
18 themselves, as encouraged by the discovery rules. This is particularly true here, where it appears that
19 at least some of the issues might be resolved without Court intervention.

20 In addition, at the November 13, 2007 hearing, the Court ordered numerous revisions to the
21 protective order. On November 19, 2007, the Court ordered UAL to make those changes, and then
22 ordered the parties to submit the jointly proposed order to the Court. This has not yet occurred.
23 Accordingly, IT IS FURTHER ORDERED that UAL shall make those changes and provide a copy to
24 ANA within a week, and that the parties shall submit the protective order to the Court within two weeks.

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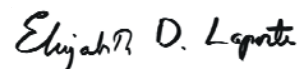
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1 As for categories of documents that ANA maintains it has produced in their entirety, ANA shall
2 provide UAL with a declaration that it has produced all responsive documents to any given request, if
3 it has not already done so. ANA shall do this within a week.

4 IT IS SO ORDERED.

5 Dated: January 22, 2008

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ELIZABETH D. LAPORTE
9 United States Magistrate Judge
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